

## **FACTSHEET VOTER CHALLENGE**

Any registered voter (rightfully in the polling place on election day) may challenge the right of a person to be or to remain registered as a voter in any precinct (HRS §11-25) on the basis that:

- 1) The voter is not the person he/she claims to be.
- 2) The voter is not a resident and therefore not entitled to vote in that precinct.

The right to challenge safeguards the integrity of the election process by ensuring that only qualified individuals are allowed to vote. Voters who are challenged retain a fundamental right to file an appeal.

### **Notice of challenge before election day**

- 1) Any challenge prior to the day of election must be submitted in writing to the City/County Clerk, explaining the grounds on which the challenge is based.
- 2) The challenge must be signed by the person making the challenge.
- 3) Upon receipt of the written challenge, the City/County Clerk is required to immediately notify the person challenged.
- 4) The Clerk shall investigate and rule upon the challenge as soon as possible.

### **Appeal to the Clerk's Ruling Prior to Election**

- 1) An appeal to the Clerk's ruling should be made in writing within ten days of service of the clerk's decision and should include a statement of the clerk's decision being appealed, stating the grounds upon which it is being contended that the clerk's decision is not correct. The name of the person challenged should also be included.
- 2) If an appeal made to the Board of Registration is sustained, the Board shall immediately certify that finding to the City or County Clerk.
- 3) The Board of Registration may hold an informal pre-hearing conference to:

- a. Simplify and clarify issues;
  - b. Make necessary or desirable amendments to the notice of the charges, or its answer, if any;
  - c. Obtain admissions of fact or documents to avoid unnecessary proof; limiting the number of expert witnesses; and
  - d. Any other materials that may aid in the reasonable and expeditious disposition of the matter.
- 4) Notice and opportunity to participate shall be given to each person involved and to each person's attorney.
- 5) At the end of the hearing, the Board may give an oral decision or take the matter under advisement with a written decision to be issued at a later date. Regardless of whether the Board gives an oral decision, the Board shall issue a written decision, including findings of fact and conclusions of law.
- 6) The Board shall notify the person ruled against, that the person may appeal the Board's decision to the Hawaii Supreme Court within ten days of service of the Board's written decision.
- 7) The notification shall contain a copy of HRS, Chapter 11, Part IV (*Appeal from Board of Registration*).
- 8) The Board shall not consider motions for reconsideration.

### **Notice of challenge on election day**

Any registered voter rightfully in the polling place may challenge the right to vote of any person who comes to the precinct officials for voting purposes.

- 1) A challenge at the polling place must be filed with the Precinct Chairperson. The challenge does not have to be in writing.
- 2) The Chairperson and Precinct Officials, not of the same party, must collect and hear the facts of the challenge, and record them in the "Report of the Board of Registration" form.
- 3) The challenge shall be considered and decided upon immediately by the precinct officials and the ruling shall be announced by the Precinct Chairperson.
- 4) Any person challenged shall be first given the opportunity to make relevant corrections to the challenge pursuant to HRS §11-21.

## **Appeal to the Precinct Official's Ruling on Election Day**

- 1) If **no** appeal is made to the ruling of the Precinct Chairperson made by either the challenger or the challenged voter, then:
  - a. The voter shall either be allowed to vote; or
  - b. The voter will be prevented from voting in accordance with the ruling.
- 2) If **no** appeal is made, the decision of the Precinct Chairperson is deemed final and will stand.
- 3) The person ruled against may appeal to the Board of Registration any ruling made by the precinct officials on a challenge made on election day.
- 4) The appeal shall be brought before the challenger and the challenged voter leave the polling place.
- 5) If an appeal is made, both the challenger and the challenged person may be parties to the appeal.
- 6) If an appeal is taken to the Board of Registration:
  - a. The appeal shall be made either before the challenged voter casts a regular ballot, or before the challenger of the challenged voter leaves the polling place, whichever is earlier.
  - b. The challenged voter shall be allowed to vote. The ballot is placed in a sealed envelope, properly marked "Challenged Ballot" to be later counted or rejected in accordance with the ruling on appeal.
  - c. The sealed envelope is deposited in the ballot box (by the Precinct Chairperson) in the presence of the challenged voter.
  - d. The Precinct Chairperson shall notify the clerk that a challenged ballot is being deposited in the ballot box and explain the circumstances of the challenge.
  - e. The Board shall discuss the challenge and come to a decision regarding the appeal.
  - f. A summary of the discussion by the Board, the decision of the Board, and the reasons for the Board's decision shall be included in the Board's minutes.
  - g. The Board shall notify the Precinct Chairperson and the City or County Clerk of its decision.

- h. The Precinct Chairperson shall notify both the challenger and the challenged voter of the Board's decision.
- 7) The Precinct Chairperson shall also notify the person ruled against that he or she may appeal the Board's decision to the Hawaii Supreme Court.
- 8) If an appeal **is** made to the Hawaii Supreme Court, the ballot shall remain in the sealed envelope to be counted or rejected in accordance with the ruling on appeal.
- 9) If needed, the register shall be corrected to conform with the court's decision.
- 10) If **no** appeal is made to the Hawaii Supreme Court, the City or County Clerk shall immediately notify the ballot counting center of the disposition of the challenge. The challenged ballot shall be counted or disposed of pursuant to HAR, Section 2-51-101.
- 11) At all times, the secrecy of the challenged voter's ballot shall be safeguarded.
- 12) All documents relating to the challenge and proceedings shall be attached to the minutes of meeting for record keeping for each Board of Registration.

This Factsheet is intended for informational purposes only and should not be used as an authority on the Hawaii election law and deadlines. Requirements and/or deadlines may change pending changes in legislation. Consult the Hawaii Revised Statutes and other sources for more detailed and accurate requirements.

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